

**TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE**



FISCAL NOTE

HB 478

March 23, 2009

SUMMARY OF BILL: Expands the “Drug-Free School Zone” to include any sexual offense, any felony involving a deadly weapon, and carjacking committed on school grounds or within 1,000 feet of any public or private school, preschool, child care agency, public library, recreational center or park. Persons who commit these offenses on the grounds of or within 1,000 feet of any preschool, child care agency, public library, recreational center or park shall be subject to fines ranging from a maximum \$10,000 for a Class E felony to a maximum \$100,000 for a Class A felony in addition to any other penalty imposed. If the offense is currently a Class A felony, the presumptive sentence shall be the maximum within the range.

Requires Global Positioning System (GPS) monitoring for the duration of an offender’s probation or parole term for any drug offense, sexual offense, felony involving a deadly weapon, or carjacking offense committed on school grounds or within 1,000 feet of any public or private school, preschool, child care agency, public library, recreational center or park. Requires the Board of Probation and Parole (BOPP) to establish an offender monitoring program and to develop implementing guidelines for the continuous satellite-based monitoring of offenders whose criminal convictions are eligible for an enhanced fine pursuant to this legislation. Hardware contracts for the program shall be executed prior to June 30, 2010. Requires BOPP to report to the members of the House of Representatives and Senate Judiciary Committees and to the Joint Oversight Committee on Correction regarding implementation on or before April 1, 2011.

Creates a Class A misdemeanor for the intentional tampering with, removal of, or vandalism to a GPS device by an offender enrolled in the program. Punishable by a mandatory minimum 180 days in a county jail. The offender is not eligible for suspension of sentence, diversion, or probation until the minimum sentence is served in its entirety. A second or subsequent offense is a Class E felony. If the offender is on probation, parole, or any other alternative to incarceration, a violation shall constitute grounds for immediate revocation. Creates a Class A misdemeanor for any person who knowingly aids, abets, or assists an offender in tampering with, removing, or vandalizing a GPS device. Requires BOPP to assess fees to be paid by offenders, subject to ability to pay, to offset the costs of time-correlated geographic tracking of offenders. Authorizes the Administrative Office of the Courts (AOC), the

Department of Correction (DOC), the Tennessee Bureau of Investigation (TBI), and all local law enforcement agencies to share criminal incident information.

ESTIMATED FISCAL IMPACT:

Increase State Revenue - \$18,700

Increase State Expenditures - \$18,400/One-Time
\$1,657,400/Recurring
\$62,100/Incarceration*

Increase Local Revenue – Not Significant

Increase Local Expenditures - \$16,400**

Assumptions:

- The presumptive sentence for a Class A drug offense, pursuant to Tenn. Code Ann. § 39-17-417, within the prohibited zone shall be the maximum within the range (25 years).
- According to the Department of Correction (DOC), there has been an average of 34.8 admissions for Class A felony drug offenses in each of the past 10 years. According to DOC, the average post-conviction time served for a Class A felony is 14.86 years. Assuming that 0.5 percent of those offenses were committed within the prohibited zone, the Department estimates one offender every five years will serve an additional 10.14 years (25 years maximum – 14.86 average post-conviction time served) as a result of this bill.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. No significant incarceration cost increase will occur due to population growth in this period.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender every five years serving additional time. The annualized time served per conviction is 740.73 days (0.20 annual number of convictions x 3,703.64 additional days served). According to DOC, the average operating cost per offender per day for calendar year 2009 is \$59.80. The annualized cost per conviction is \$44,295.65 (\$59.80 x 740.73 days).
- Current funding for GPS offender tracking was made non-recurring in the FY08-09 general appropriations act. Chapter 1203, Public Acts of 2008, Section 60, Item 13. This funding will end on June 30, 2009. Additional recurring funds in the net amount of \$3,107,180 will be required to implement offender tracking beginning July 1, 2009. An additional \$18,720 in revenue will be collected in fees from offenders.

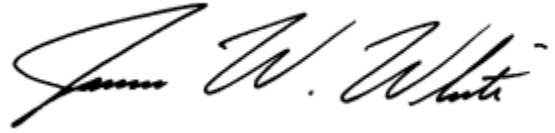
- BOPP will require 23 additional positions to implement this system statewide, including GPS technical positions and parole and probation case officers. The cost of these positions is \$1,105,555 recurring which includes \$983,664 (average salary plus benefits of \$42,768 for 23 positions) and \$121,891 (travel, supplies, training, office space and other related items for 23 positions). One-time costs of \$18,400 for safety equipment for 23 positions (\$800 x 23).
- BOPP estimates a minimum of 240 offenders on GPS and each offender will be supervised using active monitoring. The recurring GPS equipment cost is \$551,880 (240 offenders x \$6.30 cost per day x 365 days).
- BOPP currently charges offenders in the GPS program \$50 per month which would generate \$144,000 (\$50 x 12 months x 240 offenders) in revenue. Approximately 35 percent of the offenders would be exempt from this fee, resulting in \$93,600 actually due. BOPP estimates 20 percent collection which would result in \$18,720 in revenue.
- Currently, BOPP has 400 offenders on GPS supervision. In the past year, five offenders removed the equipment. If one percent of the 240 offenders tampered with or removed the GPS equipment, there would be approximately two offenders per year who would receive a Class A misdemeanor and would serve a mandatory minimum 180 days. An increase in local expenditures of \$16,398 (\$45.55 x 180 days x 2 offenders).
- DOC estimates one additional Class E felony every two years for a second or subsequent offense of tampering with or removing a GPS device. According to DOC, the average post-conviction time served for a Class E felony is 1.63 years. One Class E felony every other year with 594.45 days time served. The annualized time served per conviction is 297.22 days (0.50 annual number of convictions x 594.45 days served). The annualized cost per conviction is \$17,773.75 (\$59.80 x 297.22 days).
- No significant incarceration cost increase will occur due to population growth in this period.
- Any impact on state trial courts can be accommodated within existing resources.

**Tennessee Code Annotated, Section 9-4-210, requires that: For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

***Article II, Section 24 of the Tennessee Constitution provides that: no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

CERTIFICATION:

This is to duly certify that the information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, reading "James W. White". The signature is fluid and cursive, with the first name "James" and last name "White" clearly legible, and "W." in the middle.

James W. White, Executive Director

/lsc